

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

EMBLEM ASSOCIATES, LLC,

Complainant,

v.

ARTESIAN WATER COMPANY, INC.

Respondent.

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PSC DOCKET NO.

MOTION FOR EXPEDITED RELIEF

Dated: January 6, 2016

Thomas P. McGonigle (I.D. No. 3162)
Lindsay B. Orr (I.D. No. 5321)
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*Counsel for Complainant
Emblem Associates, LLC*

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

EMBLEM ASSOCIATES, LLC,)	
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MOTION FOR EXPEDITED RELIEF

Complainant Emblem Associates, LLC (formerly M-C Development Associates, LLC) (“Emblem Associates”), by and through its undersigned counsel, hereby submits this Motion for Expedited Relief. Upon information and belief, Complainant offers the following in support:

I. NATURE OF THE MOTION

1. Complainant, a commercial landowner, seeks an emergency order from the Public Service Commission (the “Commission”) requiring Respondent Artesian Water Company, Inc. (“Artesian Water”) to immediately provide Emblem Associates with water service for its new apartment complex, the Emblem at Christiana, pending resolution of the matters set forth in Emblem Associates’ Verified Complaint against Artesian Water, filed contemporaneously herewith (the “Complaint”).

II. FACTS

2. Emblem Associates hereby adopts and incorporates the Facts section contained in the Complaint as though set forth fully herein. Emblem Associates reiterates below the facts most pertinent to the resolution of this Motion.

3. On or about July 14, 2015, Emblem Associates began construction on its apartment complex, the Emblem at Christiana. The complex is scheduled to begin housing residents in May 2016.

4. On or about July 22, 2015, Kim Morris, Planning Coordinator for Artesian Water, contacted Emblem Associates and informed it that Artesian Water planned to seek a Contribution In-aid-of Construction ("CIAC") in excess of \$500,000 from Emblem Associates for two completed off-site facilities – the "Main Extension" and the "Christiana Booster Station." This was the first that Emblem Associates had heard that Artesian Water planned to seek CIAC from it for these completed off-site facilities. As such, Emblem Associates requested that Ms. Morris forward any and all documentation associated with the fee request, including an explanation of how the amount was calculated.

5. On or about July 28, 2015, Artesian Water demanded \$678,403 from Emblem Associates as CIAC for the completed off-site Main Extension and Christiana Booster Station.¹ Artesian Water explained that it had determined that the addition of the Emblem at Christiana would account for 34.26% of the additional water usage expected in the area. The amount of \$678,403 represents the sum of 34.26% of the total cost of the Main Extension and 34.26% of one-half of the cost of Christiana Booster Station. Despite Emblem Associates' request for an explanation of how Artesian Water calculated the amount it demanded from Emblem Associates, Artesian Water did not explain how it reached the 34.26% figure.

6. Given the last-minute notice from Artesian Water and the ongoing construction of the Emblem at Christiana, obtaining water service for the Emblem at Christiana, which was already under construction and due to open in less than a year, was very time sensitive to the long-term viability of the project. A delay in receiving water service would push back

¹ See email from Kim Morris to Debbie Finocchiaro, dated July 28, 2015 (attached hereto as Exhibit A).

construction deadlines, resulting in penalties from the general contractor and the possibility of having to renegotiate contracts; delay the scheduled opening, resulting in hundreds of thousands of dollars in lost rent and expenses associated with the delay; and damage Emblem Associates' reputation and relationship with its investors, many of whom it was working with for the first time. Having just received for the first time a demand for over half a million dollars of contribution for completed off-site facilities, however, Emblem Associates also wanted time to analyze the appropriateness and legality of the demand. In an effort to achieve both ends and to work with Artesian Water towards resolving the issue amicably, Emblem Associates requested that the parties enter into two separate agreements – one that would allow for the actual provision of water service to the Emblem at Christiana to begin immediately in exchange for payment of the necessary installation fees, and a second governing the CIAC.² Artesian Water rejected this proposal.³ Emblem Associates then asked whether Artesian Water would be willing to work with Emblem Associates on moving forward with the actual tap/service installation (estimated to cost only \$10,000) while the parties continued to work together to resolve the CIAC issue.⁴ Artesian Water rejected this proposal as well, insisting on tying the contribution amount to the provision of services to the property.⁵

7. On or about September 23, 2015, an in-person meeting was held between Emblem Associates and Artesian Water. As a result of this meeting, Artesian Water recalculated its CIAC demand to Emblem Associates, and on or about September 28, 2015, Artesian Water demanded \$459,000 from Emblem Associates as CIAC for the completed off-site Main

² See email from Debbie Finacchiaro to Kim Morris, dated July 30, 2015, attached hereto as Exhibit B.

³ See email chain between Kim Morris and Debbie Finacchiaro, dated Aug. 11-13, 2015, attached hereto as Exhibit C.

⁴ *Id.*

⁵ *Id.*

Extension.⁶ This amount excluded any contribution for the Christiana Booster Station, due to the fact that Artesian Water had determined that a 16-inch transmission main without a booster would be able to provide the minimum flow and pressure required to meet the needs of the Emblem at Christiana.

8. In October 2015, Connie McDowell, a Public Utilities Analyst for the Commission, agreed to review and informally mediate the CIAC dispute between Emblem Associates and Artesian Water. On or about October 9, 2015, Ms. McDowell informed Emblem Associates that Artesian Water had agreed to permit Emblem Associates to pay the disputed amount subject to a refund, and that Artesian Water in return would provide water service to the property while the parties worked to resolve their dispute over the CIAC amount.

9. On or about October 21, 2015, Emblem Associates sent a simple, three-page draft escrow agreement to Artesian Water, providing for payment of \$459,000 into escrow in exchange for water service to the Emblem at Christiana. Because a CIAC is non-refundable under the Commission regulations,⁷ putting the amount in escrow was a way in which Emblem Associates could ensure the money would be refundable.

10. On or about October 27, 2015, Artesian Water informed Emblem Associates that the escrow agreement was too complicated. In its place, Artesian Water sent a longer draft water services agreement to Emblem Associates, which required Emblem Associates to “agree” to pay \$459,000 as CIAC and contained no provisions for putting the amount in escrow or otherwise recovering it following resolution of the parties’ dispute. Had Emblem Associates entered such an agreement, given the non-refundable nature of a CIAC, it would have had no means of

⁶ See email from Kim Morris to Debbie Finacchiaro, dated Sept. 28, 2015, attached hereto as Exhibit D.

⁷ 26 *Del. Admin. C.* § 2001-3.8.2.

seeking to recoup its funds, as it would have effectively waived its right to challenge the fact and amount of the CIAC demand.

11. On or about October 29, 2015, Emblem Associates requested the addition of simple escrow provisions to the draft water services agreement.

12. On or about October 30, 2015, Artesian Water rejected the proposed escrow provisions and refused to further negotiate terms within the draft water services agreement.

13. Presently, Artesian Water is demanding payment of \$459,000 in the form of a non-refundable CIAC before it will provide any water service to Emblem Associates.

III. GROUNDS FOR RELIEF

14. For the reasons set forth in the Complaint, the CIAC demanded by Artesian Water of Emblem Associates does not fall within the Commission regulations governing water service.

15. As explained above, it is imperative that Emblem Associates receive water service as soon as possible for its new apartment complex. Construction is already underway at the Emblem at Christiana, with an opening scheduled for May 2016. Residential apartment buildings require water service to operate. The Emblem at Christiana requires water service no later than March 2016 in order to complete construction of apartment buildings within the complex, obtain necessary permits, and ready the apartments to receive residents in May. Any delay in receiving water service will create a chain reaction of delays in the opening of the apartment complex, will cause an exorbitant waste of time, money, and resources, and will damage Emblem Associates' reputation with investors and in the community. Accordingly, time is of the essence.

16. Given the urgency of Emblem Associates receiving water service for its new apartment complex, Emblem Associates respectfully requests expedited consideration of its

request for immediate water service contained in this Motion. Specifically, Emblem Associates requests that the Commission put an emergency order in place requiring Artesian Water to begin providing water service to the Emblem at Christiana immediately. To alleviate any concerns Artesian Water may have that Emblem Associates would not pay the amount demanded if ordered to by the Commission, Emblem Associates remains willing to deposit the disputed amount of \$459,000 with a neutral third-party escrow agent. Such an order will allow the Emblem at Christiana to continue on track to its May 2016 opening while the Commission considers the issues raised in the Complaint regarding the validity of Artesian Water's CIAC request through the normal Commission process.

IV. CONCLUSION

WHEREFORE, Emblem Associates respectfully requests that the Commission enter an order as follows:

- (a) requiring that Artesian Water provide water service to the Emblem at Christiana immediately;
- (b) requiring Emblem Associates to place the disputed amount of \$459,000 into escrow pending resolution of this dispute; and
- (c) granting Emblem Associates such other relief as the Commission may deem just and proper.

Dated: January 6, 2016

DRINKER BIDDLE & REATH LLP

A handwritten signature in dark ink, appearing to read 'T.P. McGonigle', is written over a horizontal line.

Thomas P. McGonigle (I.D. No. 3162)

Lindsay B. Orr (I.D. No. 5321)

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Wilmington, Delaware 19801

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*Counsel for Complainant
Emblem Associates, LLC*

EXHIBIT A

Debbie Finocchiaro

From: Kim Morris <KMorris@artesianwater.com>
Sent: Tuesday, July 28, 2015 10:19 AM
To: Debbie Finocchiaro
Subject: Artesian Off-Site
Attachments: Mall Off-Site Main Extension Layout.pdf

Good afternoon Debra,

In 2013, due to the increase in development in the Christiana Mall area and along Stanton Christiana Road, Artesian Water Company developed plans to provide a necessary second source of water for appropriate reliability of service to the Christiana Mall area.

Artesian installed approximately one (1) mile of water main from the Christiana Park & Ride located at SR 273 and SR 7 intersection, along Old Kings Highway and Old Baltimore Pike to connect to the pre-existing water line stub extending from the Christiana Mall (see attached.)

The project also included a new booster station. The water main at SR 273 is in Artesian's Service Level #1 (pressure zone #1) and the Christiana Mall area is in Service Level #2, requiring a booster station to pump the water to the higher pressure zone.

The total cost of the water main extension was \$1,350,000, plus one half of the total cost of the new booster station (total \$1,260,000) equaling \$630,000. The total cost of the off-site main extension project to be borne by the developers was \$1,980,000.

Based on all of the proposed development in the area it has been determined that M-C Development Associates, LLC (Churchmans Meadows) with the addition of 245 apartment units will account for 34.26% of the additional water usage expected in the area and therefore should contribute \$678,403 as its portion of the total cost of the off-site water main extension project. The other developers that have already shared in the cost of the project are the Christiana Mall for the addition of the Cabela's and the Cinemark Theater and the Christiana Fashion Center.

The above amount is in addition to the amount required to install the new 8-inch water service to your property. The entire amount due will be calculated and outlined in a Letter Agreement between Artesian Water Company and M-C Development Associates, aka Leon N. Weiner and Associates, Inc.

Please let me know if you have any other questions or if you need any additional information.

Kindest regards,

Kimberley A. Morris

Planning Coordinator
Artesian Water Company, Inc.
Office: (302) 453-6966
E-mail: kmorris@artesianwater.com

Kimberley A. Morris

Planning Coordinator
Artesian Water Company, Inc.
Office: (302) 453-6966
E-mail: kmorris@artesianwater.com

EXHIBIT B

Debbie Finocchiaro

From: Debbie Finocchiaro
Sent: Thursday, July 30, 2015 4:41 PM
To: 'Kim Morris'
Subject: Emblem @ Christiana

Good Afternoon Kim,

Thank you for the update. Can you provide a time line for the estimate, do you think that next week might be feasible?

Diamond Materials is the site contractor for our general contractor Whiting Turner. I will follow up with them as this is already part of their contract.

As for the letter agreements, I am requesting that the agreement for the Actual Water Service and the "Main Contribution" be separate. As you are aware we were just informed on Tuesday, July 28, 2015 that Artesian is requesting 630K which are the fees associated with "Contribution" charges for the Water Main Installation Project that was completed in 2014.

I am sure that Artesian is sympathetic to the fact that we were never provided any notification prior to our July 28th of the 630K "contribution" fees that you have requested. In the spirit of working together I am hopeful we can have the agreements separated.

I appreciate all of your help and if possible can you provide an answer ASAP on the separation of the agreements.

The new entity is Emblem Associates LLC, the original name was M-C Development Associates, LLC.

Thank you and have a good evening.

Debra L. Finocchiaro

Vice President & Director of Construction
LNW&A Construction Corp.
4 Denny Road, Suite 1
(302) 761-7365 (direct dial)
(302) 761-2646 (fax)



From: Kim Morris [mailto:KMorris@artesianwater.com]
Sent: Wednesday, July 29, 2015 12:44 PM
To: Debbie Finocchiaro <DFinocchiaro@LNWA.com>
Subject: Reply - Estimate Timing

Hello Debbie,

Unfortunately, I will not have the estimate done this week.

I am waiting for the field information to come back from the Artesian Inspector and then we need to apply for the DelDOT Permit. Once we have the approved permit and a material list we will forward the documents to the Artesian

EXHIBIT C

Debbie Finocchiaro

From: Debbie Finocchiaro
Sent: Thursday, August 13, 2015 4:33 PM
To: 'Kim Morris'
Cc: Adam Gould
Subject: Emblem Water Tap from Diamond Materials

Kim,

That is disappointing to hear. Until we are able to get this resolved are we able to obtain a meter for the fire hydrant so we can have water to our site while we continue our site work? Please let me know today if possible if this is an option.

Thank you,

Debra L. Finocchiaro

Vice President & Director of Construction
LNW&A Construction Corp.

4 Denny Road, Suite 1
(302) 761-7365 (direct dial)
(302) 761-2646 (fax)



From: Kim Morris [mailto:KMorris@artesianwater.com]
Sent: Thursday, August 13, 2015 4:03 PM
To: Debbie Finocchiaro <DFinocchiaro@LNWA.com>
Cc: Adam Gould <AGould@artesianwater.com>
Subject: RE: Emblem Water Tap from Diamond Materials

Good afternoon Debbie,

Adam and I further discussed the situation with the executives and can offer the following information:

We understand that the notification of the contribution is alarming and does require thought and discussion within your company. As stated previously, we let you know as soon as we knew construction was beginning at the site. Had we known earlier that construction was slated to start this summer we would have shared the contribution amount sooner, as it has been established since the planning of the off-site main extension project began in late 2012.

We also understand that formulating a payment of such a large amount needs some time and consideration, however as a Utility company, regulated by the State of Delaware Public Service Commission (PSC), we need to tie the contribution to the provisions for service to the property. We are open to suggestions and are willing to work with you on establishing mutually agreeable terms for payment of the off-site main contribution.

Please provide us with your collective thoughts regarding paying Artesian the contribution (\$678K) and the cost of the installation of the water service so that we can begin discussions and work out the terms. Once we have ironed out the terms for payment we will be able to produce a Letter Agreement quickly to not delay the installation of the water service.

Kindest regards,

Kimberley A. Morris

Planning Coordinator
Artesian Water Company, Inc.
Office: (302) 453-6966
E-mail: kmorris@artesianwater.com

From: Debbie Finocchiaro [<mailto:DFinocchiaro@LNWA.com>]
Sent: Wednesday, August 12, 2015 1:37 PM
To: Kim Morris <KMorris@artesianwater.com>
Cc: Adam Gould <AGould@artesianwater.com>
Subject: Emblem Water Tap from Diamond Materials

Good Afternoon Kim and Adam,

I immediately shared with the partners of the company the information you sent to me on July 28, 2015 requesting a contribution in the amount of 678K for the Water Main Installation project that was completed in 2014. I am sure that the executive staff can appreciate that a contribution of this magnitude that was requested just weeks ago needs to be reviewed, understood and agreed to before we can document particulars in an agreement, as Artesian is requiring.

With Artesian's rejection of separating the agreements, I am hopeful that we can still continue with moving forward with the work associated with the tap / service installation that is necessary to bring water to our site. As you know construction is underway and any delay with completing this necessary work will cause delays, both timing and financial. Having said that I am requesting that while we work on resolving the "contribution" matter, Artesian will continue to work with us on moving forward with the actual tap/service installation which you have estimated the cost @ approximately 10K.

I am prepared to move forward with paying the tap/service fee (estimated at 10K) ASAP, please let me know how we can achieve getting this done.

Thank you for your anticipated cooperation.

Debra L. Finocchiaro

Vice President & Director of Construction
LNW&A Construction Corp.
4 Denny Road, Suite 1
(302) 761-7365 (direct dial)
(302) 761-2646 (fax)



From: Kim Morris [<mailto:KMorris@artesianwater.com>]
Sent: Tuesday, August 11, 2015 4:09 PM
To: Debbie Finocchiaro <DFinocchiaro@LNWA.com>
Cc: Adam Gould <AGould@artesianwater.com>; Chad Reynolds <CReynolds@LNWA.com>; Chris Bartges

<CBartges@LNWA.com>

Subject: RE: Emblem Water Tap from Diamond Materials

Good afternoon Debbie,

I met with my Manager and some of the Executive staff yesterday, 8/10/2015 regarding the separation of the agreements at the Emblem project.

The Executives would like to know what exactly you would like to propose with regards to payment of the Main Contribution at the Emblem at Christiana (formerly Churchmans Meadows). Whatever is agreed upon with regards to Artesian receiving payment can be established in one agreement.

Although we did pass on the information regarding the Main Contribution as soon as we were notified that construction was beginning at the Emblem, we are sympathetic to the timing of the notice. With that being said we are willing to work on project terms that will be satisfactory for all parties involved.

With the labor proposal from Diamond Materials, I have now calculated the "Estimated Cost" of the service installation project to be just under \$10,000.

Please let us know what your thoughts are regarding the payment of the \$678K contribution to the off-site water main. My Manager, Adam Gould and I are available to answer any questions you may have or to discuss the project, if you desire.

Kindest regards,

Kimberley A. Morris

Planning Coordinator
Artesian Water Company, Inc.
Office: (302) 453-6966
E-mail: kmorris@artesianwater.com

From: Debbie Finocchiaro [<mailto:DFinocchiaro@LNWA.com>]

Sent: Friday, August 07, 2015 4:24 PM

To: Kim Morris <KMorris@artesianwater.com>

Subject: Emblem Water Tap from Diamond Materials

Kim,

Attached is the proposal for the tap you had requested for the agreement to be processed. If you need anything else from me please let me know.

Have a great weekend.

Debra L. Finocchiaro

Vice President & Director of Construction
LNW&A Construction Corp.
Denny Road, Suite 1
(302) 761-7365 (direct dial)
(302) 761-2646 (fax)

EXHIBIT D

From: Kim Morris [mailto:KMorris@artesianwater.com]
Sent: Monday, September 28, 2015 4:35 PM
To: Debbie Finocchiaro <DFinocchiaro@LNWA.com>
Cc: Adam Gould <AGould@artesianwater.com>; John Thaeher <JThaeher@artesianwater.com>; Joe DiNunzio <JDINunzio@artesianwater.com>; Dave Spacht <DSpacht@artesianwater.com>
Subject: Artesian Contribution

Good afternoon Debbie,

After reviewing the calculations related to the new booster station in relation to the increased water main size, we have re-calculated the contribution owed by Emblem Associates (LNW&A) to be \$459,000.

That amount, along with the proposed 8-inch water service installation and the cost for lowering the existing 16" water main (to eliminate a conflict with the proposed sewer), brings the total amount due to Artesian to \$488,500. (Does not include the 2-inch temp service)

We are desirous to keep all aspects of the project in one agreement. The Letter Agreement including all costs can be prepared and ready for execution within a day or two of your agreeing to the terms.

Please acknowledge receipt of the e-mail and let us know your decision regarding the terms of the agreement.

Kindest regards,

Kimberley A. Morris
Planning Coordinator
Artesian Water Company, Inc.

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Complainant,

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ARTESIAN WATER COMPANY, INC.

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PSC DOCKET NO.

CERTIFICATE OF SERVICE

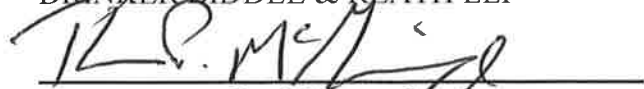
I, Thomas P. McGonigle, counsel for Complainant, do hereby certify that on January 6, 2016, I caused to be served a true and correct copy of the foregoing Motion for Expedited Relief, via hand delivery to each of the following persons:

Division of the Public Advocate
820 N. French Street
4th Floor
Wilmington, DE 19801

Artesian Water Company, Inc.
c/o John J. Schreppler II, Esq.
Artesian Resources Corporation
644 Churchmans Road
Newark, DE 19702

Dated: January 6, 2016

DRINKER BIDDLE & REATH LLP



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